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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

JUL - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of

Trinity Christian Center of
Santa Ana, Inc., d/b/a TRINITY
BROADCASTING NETWORK

For Renewal of License of
Commercial Television Station
WHSB-TV, Monroe, Georgia

and

GLENDALE BROADCASTING COMPANY

For Construction Permit
Monroe, Georgia

MM Docket No. 93-156

File No. BRCT-911129KR

File No. BPCT-920228KE

To: Honorable Joseph Chachkin

I. A MOTION TO DISMISS DOES NOT LIE AGAINST GLENDALE

Trinity does not seek the specification of hearing issues against Glendale. Instead, it has filed a motion to summarily dismiss Glendale's application. It is wholly improper to file a motion to dismiss based upon contested allegations that an applicant is financially unqualified. "[S]uch motions (nowhere contemplated in the adjudicatory rules) might lie only where, e.g., directed at another party's failure to prosecute or failure to have properly paid a fee." Edwin A. Bernstein, 6 FCC Rcd 6841, 6843 n.1, 70 RR 2d 413, 413-414 n.1 (Rev. Bd. 1991). Neither circumstance is present here. If an applicant believes another applicant is financially unqualified, the proper step to take is to file a petition to enlarge issues. See 47 U.S.C. §309(d), §1.229 of the Commission's rules. The cases cited by Trinity on page 9 of its motion all involved applicants who had concededly never had financing or had lost their financing and had had their financial amendments rejected for lack of good cause. George F. Gardner, Glendale's President, made a financing commitment to Glendale before the Monroe application was filed, and he has never withdrawn that commitment. Glendale in no way concedes that it was ever financially unqualified. Trinity's motion to dismiss must therefore be summarily denied.

Moreover, Trinity's motion is not based on one piece of competent evidence. It substitutes gross speculation for

affidavits of persons with personal knowledge of the facts being asserted. For example, Trinity speculates from the absence of certain language in Mr. Gardner's commitment "that Gardner did not obtain the necessary professional appraisals to ascertain whether his non-liquid assets were sufficient under Commission standards." Trinity Motion, P. 6. If the Presiding Judge reads Gardner's commitment letter (See Trinity Motion, Attachment 2), it cannot be competently concluded whether or not Gardner had appraisals.¹ If Trinity had filed a petition to enlarge issues, its petition would have had to be denied as wholly failing to comply with Section 1.229(d) of the Commission's rules. Since Trinity is seeking the draconian remedy of summary dismissal, Trinity should be held to at least as high a standard of factual proof as if it filed a petition to enlarge issues. Trinity wholly fails to meet that standard.

Trinity heavily relies upon Washoe Shoshone Broadcasting, 3 FCC Rcd 3948. 3953. 64 RR 2d 1748. 1755 (Rev. Rd. 1988) for

hearing has been held. At this stage, however, Trinity bore the burden of making a prima facie case that Glendale was not financially qualified, and it failed to provide one piece of evidence that would support such a showing. Glendale thus has no obligation to document its financial plan. Priscilla L. Schwier, 4 FCC Rcd 2659, 2660, 66 RR 2d 727, 729 (1989).² In essence, Trinity is asking the Presiding Judge to guess that Glendale may not be financially qualified although no evidence supports that guess.

II. GLENDALE HAS ALWAYS BEEN FINANCIALLY QUALIFIED

Nonetheless, in order to explain how misguided Trinity's arguments are, Glendale will fully demonstrate that it has been continuously financially qualified during the time its Miami and Monroe applications have been pending. It will also demonstrate that Trinity's arguments are legally or factually wrong.

Mr. Gardner was the person responsible for certifying that Glendale was financially qualified in both the Miami and Monroe applications. At the time he signed both applications, Mr. Gardner had before him a personal financial statement dated December 6, 1991 with \$11,997,327 and no liabilities.

² It should also be note that Glendale is no longer relying upon Mr. Gardner for construction and operation funds in the Miami proceeding, so the only pertinent question in that proceeding is whether Glendale misrepresented facts.

Declaration of George F. Gardner, submitted as Attachment 1 to this opposition. As noted by Trinity at Page 2 of its motion, the maximum commitment Mr. Gardner had to Glendale for construction and operation expenses was \$5,040,882, during the period between February 28, 1992 and March 26, 1992. Mr. Gardner's commitment for construction and operation expenses was reduced to \$2,871,066 when the Miami application was amended to substitute a bank letter from Northern Trust Bank for Mr. Gardner's personal commitment. Mr. Gardner's financial statement showed far more than \$5,040,882 in net assets.

Trinity makes three arguments why Glendale is not financially qualified. First, it argues that Mr. Gardner's letter demonstrates that he did not have professional appraisals of his non-liquid assets, which allegedly had to be in hand when he certified. Second, Trinity questions whether Gardner had sufficient assets net of liabilities to meet his commitments. Finally, Trinity speculates that if the Commission's policies on discounting certain non-liquid assets was considered, Mr. Gardner would lack sufficient funds. None of Trinity's arguments has any merit whatsoever.

As Glendale noted above, Trinity has not shown in a competent fashion whether or not Mr. Gardner had appraisals before him when he certified. A more fundamental problem with Trinity's argument is that Mr. Gardner was not required to have professional appraisals of non-liquid assets in hand when

he certified. The cases cited by Trinity at Page 4 of its motion stand for the proposition that if a financial qualifications issue is specified against an applicant and that applicant is forced to prove its qualifications at hearing, the value of real estate and certain other types of property must be established by professional appraisals. None of these cases stand for the proposition that such appraisals must be in hand at the time of certification. Indeed, the first five cases Trinity cites (Central Florida, Chadwell, Christian Children's Network, Texas Communications, and Port Huron) all involve applications filed under the 1981 version of FCC Form 301. Such applicants were not required to prepare any documentation at the time of certification. Northampton Media Associates, 4 FCC Rcd 5517, 5519, 66 RR 2d 1246, 1249 (1989). Dodge-Point Broadcasting Co., 11 FCC 2d 751, 754, 12 RR 2d 457, 461 (1968) and Vista Broadcasting Company, Inc., 18

documentation applicants must have. A copy of the pertinent portions of these instructions are submitted as Attachment 2 to this petition. These instructions do not require that an applicant have appraisals for non-liquid assets in hand at the time of certification. Instead, the instructions indicate that if non-liquid assets are being relied upon, all that is required is:

a statement showing how non-liquid assets will be used to provide the funds, and the extent to which such assets have liens or prior obligations against them.

Mr. Gardner's letter to Ms. Adams states that he has "identified specific assets which are unencumbered and that can be readily converted to cash or other liquid assets. The sale of these assets would provide me with specified liquid assets to meet this loan commitment." Trinity Motion, Exhibit 2, P. 1 (emphasis added). Thus, Glendale fully complied with the Commission's documentation requirements for non-liquid

potential future market fluctuations..." Trinity Motion, P. 4. Trinity's statement of the law is inaccurate. In the case of real estate and certain types of equipment, the Commission will reduce the market valuation "by as much as one-third" "[b]ecause the net proceeds received by a seller of real estate are normally less than fair market value..." Port Huron Family Radio, Inc., 5 FCC Rcd 4562, 4563 n.5, 68 RR 2d 28, 29 n.5 (1990). In the case of accounts receivable, the Commission will credit seventy-five percent of such receivables. Id. Even after these adjustments are made to Mr. Gardner's financial statement, Mr. Gardner had assets far exceeding the money he needed to finance both the Miami and Monroe applications. Attachment 1, Pp. 1-2. Trinity's motion only offers rank speculation instead of competent evidence. None of its arguments have any merit whatsoever.

III. CONCLUSION

Trinity has not even come close to justifying the draconian remedy of summary dismissal. It has not even raised a substantial and material question about Glendale's financial qualifications. The motion is based upon rank speculation, and Glendale has specifically rebutted each of Trinity's arguments. Trinity's argument as to whether Glendale could show good cause for a financial amendment is meaningless because no amendment is necessary.

Accordingly, Glendale asks the Presiding Judge to deny
Trinity's "Motion to Dismiss Application."

Respectfully submitted,

GLENDALE BROADCASTING COMPANY

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Its Attorneys

Date: July 8, 1993

DECLARATION

George F. Gardner, under penalty of perjury, declares that the following is true and correct to the best of his knowledge:

I am the President of Glendale Broadcasting Company, an applicant for construction permits for new commercial television stations at Miami, Florida (File No. BPCT-911227KE) and Monroe, Georgia (File No. BPCT-920228KE).

I was the person who signed both of Glendale's applications. I certified that Glendale was financially qualified to construct both the Miami and Monroe stations. At the time I signed the original Miami application, Glendale was relying upon me for \$2,169,816 in funds as well as a leasing letter from The Firestone Company. Glendale amended its Miami application on March 26, 1992 to substitute a bank letter from Northern Trust Bank for my personal funds. For the Monroe application, Glendale has always relied upon me for the \$2,871,066 it estimates is needed to construct the Monroe station and operate it for three months without revenue.

When I signed the Miami application on December 24, 1991 and the Monroe application on February 26, 1992, I had a financial statement detailing my financial condition as of December 6, 1991. There was no material change in my financial condition between December 6, 1991 and February 26, 1992. That financial statement showed that I had assets of \$11,997,327 with no liabilities. Even if the value of the amounts receivable listed in that statement was reduced by twenty-five percent and the value of the listed real estate was reduced by one-third, my financial statement showed

assets far exceeding the \$5,040,882 I needed to finance both the Miami and Monroe applications during the period from February 28, 1992 to March 26, 1992.

The statements I made to Mary Anne Adams in my letters dated December 20, 1991 and February 26, 1992 were true and correct. I have always had more than sufficient unencumbered assets to meet my commitments to Glendale.

July 1, 1993
Date

George F. Gardner
George F. Gardner

**Instructions for FCC 301
Application for Construction Permit for Commercial Broadcast Station
(FCC Form 301 attached)**

GENERAL INSTRUCTIONS

A. This FCC form is to be used to apply for authority to construct a new commercial AM, FM or TV broadcast station, or to make changes in the existing facilities of such a station. It consists of the following sections:

- I. GENERAL INFORMATION
- II. LEGAL QUALIFICATIONS
- III. FINANCIAL QUALIFICATIONS
- IV-A. PROGRAM SERVICE STATEMENT
- IV-B. INTEGRATION STATEMENT
- V. ENGINEERING DATA AND ANTENNA AND SITE INFORMATION
- VI. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM
- VII. CERTIFICATIONS

An applicant for change in facilities need file only Sections I, V and VII. Do not file Sections II, III, IV-A, IV-B and VI.

B. Many references to FCC Rules are made in this application form. Before filling it out, the applicant should have on hand and be familiar with current broadcast rules in 47 Code of Federal Regulations (C.F.R.):

- (1) Part 0 "Commission Organization"
- (2) Part 1 "Practice and Procedure"
- (3) Part 17 "Construction, Marking and Lighting of Antenna Structure"
- (4) Part 73 "Radio Broadcast Services"

FCC Rules may be purchased from the Government Printing Office, Washington, D.C. 20402. You may telephone the GPO Order desk at (202) 783-3238 for current prices.

C. Prepare an original and two copies of this form and all exhibits. This application with all required exhibits should be filed with the FCC's Washington, D.C. office in accordance with 47 C.F.R. Section 0.401.

D. By law, the Commission is required to collect charges for certain of the regulatory services it provides to the public. Generally, applicants seeking to construct a new commercial AM, FM or TV broadcast station or to make changes in the authorized facilities of such a station are required to pay and submit a fee with the filing of the application. See 47 C.F.R. Section 1.1112. A listing of the required charges is set forth in 47 C.F.R. Section 1.1104. Full payment of the required fee may be made by check, bank draft or money order payable to the Federal Communications Commission. An application submitted with an insufficient payment or with an inappropriate form of payment will be returned, along with the tendered payment, to the applicant without processing. Except for the limited circumstances enumerated in 47 C.F.R. Section 1.1111, an accepted fee payment will be retained by the government irrespective of the subsequent substantive disposition of the underlying application. For further information regarding fees, see 47 C.F.R., Part 1, Subpart G.

E. Public Notice Requirements

- (1) 47 C.F.R. Section 73.3580 requires that applicants for construction permits for new broadcast stations and major changes in existing facilities (as defined in 47 C.F.R. Sections 73.3571(a)(1) (AM), 73.3572(a)(1) (television), or 73.3573(a)(1) (FM)) give local notice in a newspaper of general circulation in the community to which the station is licensed. This publication requirement also applies with respect to major amendments thereto as defined in 47 C.F.R. Sections 73.3571(b) (AM), 73.3572(b) (television), and 73.3573(b) (FM).
- (2) Completion of publication may occur within 30 days before or after tendering of the application. Compliance or intent to comply with the public notice requirements must be certified in Section VII of this application. The information that must be contained in the notice of filing is described in Paragraph (f) of 47 C.F.R. Section 73.3580. Proof of publication need not be filed with this application.

Section 310 of the Communications Act has been interpreted with respect to limited partnerships to prohibit equity contributions or voting interests of alien limited partners, which in the aggregate exceed 20% in a broadcast licensee or which in the aggregate exceed 25% in a partnership which holds a controlling interest in a broadcast licensee. The interests held by aliens in a licensee through intervening domestically organized limited partnerships can be determined by multiplication of any intervening insulated interests in the manner set forth above with respect to corporate applicants, except that insulated limited partnership interests exceeding 50% may be multiplied rather than considered as a 100% interest. However, the multiplier is not used in calculating the limited partnership link in the ownership chain UNLESS the applicant is able to certify that the alien partner is effectively insulated from active involvement in the partnership affairs. For example, see Instruction A, above.

The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.

- E. Commission policies and litigation reporting requirements for broadcast applicants have been revised with a view to focusing on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct which demonstrates the proclivity of an applicant to deal truthfully with the Commission and to comply with its rules and policies. The categories of relevant non-FCC misconduct include: (1) misrepresentations to any other governmental unit resulting in criminal or civil violations; (2) criminal convictions involving false statements or dishonesty; (3) certain felony convictions; and (4) adjudicated violations of anticompetitive or antitrust laws that are broadcast related. The parameters of the revised policies and requirements are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rod 421 (1986).

INSTRUCTIONS FOR SECTION III - FINANCIAL QUALIFICATIONS

- A. All applicants filing Form 301 must be financially qualified to effectuate their proposals. Certain applicants (i.e., for a new station, to reactivate a silent station, or if specifically requested by the Commission) must demonstrate their financial qualifications by filing Section III. DO NOT SUBMIT Section III if the application is for changes in operating or authorized facilities.
- B. An applicant for a new station must attest it has sufficient net liquid assets on hand or committed sources of funds to construct the proposed facility and operate for three months without additional funds. In so certifying, the applicant is also attesting that it can and will meet all contractual requirements, if any, as to collateral, guarantees, donations, and capital investments. As used in Section III, "net liquid assets" means the lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.
- C. Documentation supporting the certification of financial qualifications need not be submitted with this application but must be available to the Commission upon request. The Commission encourages that all financial statements used in the preparation of this application be prepared in accordance with generally accepted accounting principles.
- D. (1)(a) The applicant must estimate the initial costs of constructing and operating the facility proposed in the application. The estimate for constructing the facility should include, but is not limited to, costs incurred for items listed below. In calculating costs for the items below, determine the costs for the items in place and ready for service, including amounts for labor, supervision, materials, supplies, and freight:

Antenna System (including antenna, antenna tower, transmission line, phasing equipment, ground system, coupling equipment and tower lighting);

RF Generating Equipment (including transmitter, tubes, filters, diplexer, remote control equipment, and automatic logger);

Monitoring and Test Equipment (including frequency monitor, modulation monitor, oscilloscope, dummy load, vectorscope, and video monitors);

Program Origination Equipment (including control consoles, film chains, cameras, audio tape equipment, video tape equipment, program and distribution amplifiers, limiters, and transcription equipment);

Acquiring Land;

Acquiring, Remodeling or Constructing Buildings;

Services (including legal, engineering, and installation costs); and

Other Miscellaneous Items (including mobile and STL equipment, non-technical studio furnishings, etc)

(b) The estimate must also include the costs of operating the proposed facility for the first three months, including the costs of proposed programming, without relying on advertising or other revenues to meet operating costs. To arrive at an estimate of the total costs to be met by the applicant, the total construction costs should be added to the estimated cost of operation for three months.

(2) The applicant must also identify, in the application, its sources of funding for the construction and operation of the proposed facility for the first three months. For each source of funding, the applicant must identify the source's name, address, telephone number, a contact person if the source is an entity, the relationship (if any)

- E. It is Commission policy not to approve extensions of time for construction on the basis of financial inability or unwillingness to construct.

INSTRUCTIONS FOR SECTION IV-A - PROGRAM SERVICE STATEMENT

Applicants need only file a program service statement called for in Section IV-A of this application. See Deregulation of Radio, 84 FCC 2d 968 (1981), reconsideration denied, 87 FCC 2d 797; and Commercial TV Stations, 98 FCC 2d 1076 (1984), reconsideration denied, 60 RR 2d 526 (1986).

INSTRUCTIONS FOR SECTION IV-B - INTEGRATION STATEMENT

The applicant's integration statement must identify each principal who will participate in the management of the station, his or her position, duties and hours, and for each principal whether a qualitative credit will be claimed for minority status, past local residence, female status, broadcast experience or civic activity. Any claim for "daytimer" preference must also be stated. An applicant may include its integration statement in this application, but it must file its integration statement with the Commission by the amendment as-of-right date in FM proceedings, or the "B" cut-off date in AM and television proceedings. If an applicant fails to disclose its integration statement by the amendment as-of-right or "B" cut-off date, whichever is applicable, it will receive no credit for integration in the comparative hearing.

INSTRUCTIONS FOR SECTION V - ENGINEERING DATA AND ANTENNA AND SITE INFORMATION

- A. An indication as to the specific transmitter make and model is not required on the application. Rather, any subsequent permit authorizing construction will require installation of a type accepted transmitter or one complying with the provisions of 47 C.F.R. Section 73.1660. Applicants for AM facilities are reminded of the maximum rated power limitations for transmitters imposed by 47 C.F.R. Section 73.1665.
- B. Prior to January 4, 1982, parties submitting AM directional antenna patterns pursuant to 47 C.F.R. Sections 73.150 and 73.152 (standard patterns and modified standard patterns) had to submit patterns which were tabulated and plotted using units of millivolts per meter at one mile. Beginning on January 4, 1982, such patterns must be tabulated and plotted using units of millivolts per meter at one kilometer. Applications which are amended should use the units in effect as of the day of submission of the amendment. Applications which were on file prior to January 4, 1982, need not be amended solely for the purpose of conversion to metric units. Applications which are submitted using the wrong units will be returned unless they are promptly amended to use the correct units. See 47 C.F.R. Section 73.181(f) concerning uses of the metric system with AM stations.
- C. When applying for FM station construction permit, one of the submissions required by FCC Form 301, Section V-B, is a 7.5 minute series U.S. Geological Survey topographic quadrangle map upon which is marked the transmitter site. The Commission recommends that applicants submit at least one original copy of each appropriate full-scale USGS quadrangle map, if available, with the transmitter site properly marked and labeled.

In order to allow the Commission's processing staff to verify the correctness of the geographic coordinates

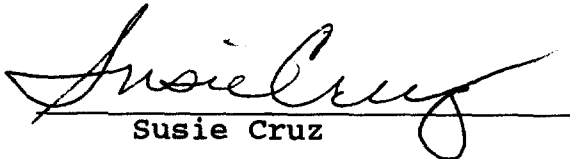
CERTIFICATE OF SERVICE

I, Susie Cruz, do hereby certify that on the 8th day of July 1993, a copy of the foregoing "Opposition to Motion to Dismiss Application" was sent first-class mail, postage prepaid to the following:

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